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November 12, 2009

Jane Hicks
Division Chief
Regulatory Division
U.S. Army Corps of Engineers
1455 Market Street, 16th Floor
San Francisco, California 94103-1398

Re: Redwood City Saltworks Preliminary Jurisdictional Determination Request

Dear Ms. Hicks,

DMB Redwood City Saltworks (Applicant) – a venture whose principals are DMB Associates, Inc. and Cargill, Inc. – hereby requests that the U.S. Army Corps of Engineers (Corps) prepare a preliminary jurisdictional determination (PJD) in accordance with the Corps' Regulatory Guidance Letter (RGL) 08-02 for the approximately 1,478 acres of industrial salt production facilities and adjacent areas in and around Redwood City, San Mateo County, California (Saltworks Site or Site). The Site consists of lands owned by Cargill Point, LLC, as well as some adjoining lands owned by others. The latter areas are included in our request for a PJD because these adjacent lands may be affected by proposed development and restoration at the Saltworks Site. As we discussed at our pre-application meeting with the agencies on June 9, 2009, we are submitting this PJD request in accordance with RGL 08-02, and we understand that a written response from the Corps would follow within 60 days. Once we have finalized the PJD, we will file our Clean Water Act Section 404 and Rivers and Harbors Act Section 10 permit application soon thereafter.

The Applicant desires to move forward with a PJD given the unique history and nature of the Site. As you know, the Applicant and Cargill consistently have maintained that the salt production facilities of the Site are not subject to federal jurisdiction under either the Clean Water Act (CWA) or the Rivers & Harbors Act (RHA) and no final approved jurisdictional determination has ever been conducted by the Corps or the U.S. Environmental Protection Agency (EPA). By its terms, RGL 08-02 provides permit applicants the ability to "set aside questions regarding CWA and RHA jurisdiction" and elect to use a PJD to process an individual or general permit. PJDs can be used "even where initial indications are that the waterbodies or wetlands on a site may not be jurisdictional..." (emphasis added). A PJD makes "no legally



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binding determination of any type regarding whether CWA/RHA jurisdiction exists over the particular water body or wetland in question." Instead, the wetlands and waters that are identified within the PJD are simply presumed to meet the requirements of federal jurisdiction under CWA Section 404 and RHA Section 10 for the sole and exclusive purpose of processing the "50/50 Balanced Plan" project application currently pending at the City of Redwood City.

By electing to proceed under a PJD, the Applicant understands that in processing its application for a permit, the Corps will treat "all waters and wetlands that would be affected in any way by the permitted activity on the site as if they are jurisdictional waters of the U.S." Therefore, waters and wetlands, as applicable, will be evaluated in accordance with the agencies' 404(b)(1) Guidelines at 40 CFR Part 230 and compensatory mitigation regulations at 33 CFR Parts 325; 332 and 40 CFR Part 230 (73 Fed.Reg. 19593 (April 10, 2008)). Importantly, however, by electing to proceed under a PJD, and as recognized by the terms of RGL 08-02, the Applicant does not waive any rights to later challenge federal jurisdiction over the Site. RGL 08-02 specifically states that applicants who proceed under a PJD can later seek an approved jurisdictional determination and challenge federal jurisdiction. Accordingly, as contemplated by RGL 08-02, the Applicant specifically reserves all rights to challenge federal jurisdiction over any portion or all of the Site in the future.

For purposes of this PJD request, the Site has been broken down into four Study Areas, A-D, in order to distinguish among areas of the Site that have differing hydrological influences, land uses, and ownership. The four Study Areas in order of largest to smallest are as follows:

Study Area D: Salt Production Facility. Study Area D is Cargill's Salt Production Facility that has been in industrial use since 1901 and was expanded and constructed into its current configuration pursuant to and in accordance with a United States War Department permit issued in 1940. The permitted levee system severed the Site from the Bay, and the use and configuration of the Salt Production Facility has remained largely unchanged to this day. Study Area D as delineated by Wetlands Research Associates, Inc. (WRA) and recognized by the Corps and EPA in 2002 contains no special aquatic sites. It includes approximately 1,365 acres of areas owned by Cargill (portions of APN 054-310-160, 054-300-230, and 054-300-670) that are involved in the industrial salt production process (Figure 2). Study Area D includes: (a) Facility Headquarters and Levees (approximately 95 acres), (b) the Crystallizer Complex (approximately 527 acres), (c) the Pickle Complex (approximately 437 acres); (d) the Bittern Complex (approximately 245 acres); and the Multi-Use Area Complex (approximately 61 acres).

Study Area C: Outboard of the Levee Waterfront Area. Study Area C is approximately 85 acres owned by Cargill (outboard of the levee portions of APN 054-310-160; 054-300-230, 054-300-670) and is comprised of the tidally-influenced areas along Westpoint Slough, First Slough, and Flood Slough (Figure 2). These areas are outboard of the containment levees surrounding the Salt Production Facility (Study Area D).

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Jane Hicks
November 12, 2009
Page 3

Study Area B: Regional Storm Drain Channel Area. Study Area B is approximately 20 acres and includes a drainage ditch and surrounding areas along the southern boundary of the Saltworks Site (Figure 2). Study Area B contains parcels owned by Cargill (a portion of APN 054-310-160 and 054-121-160) that is burdened by a drainage easement benefiting the City of Redwood City (2264 O.R. 130), one parcel owned by the City of Redwood City (APN 054-121-120), and one parcel owned by Pacific Gas and Electric (PG&E) (122 OR 258, Parcel 2).

Study Area A: Seaport Channel and Seaport Levee Areas. Study Area A is approximately 8 acres comprised of a detention basin and surrounding levees located along the western boundary of the Saltworks Site to the east of Seaport Boulevard (Figure 2). The Seaport Levee Area is comprised of a levee within Cargill property adjacent to Seaport Boulevard (the western-most portion of APN 054-300-320), and the Seaport Channel Area contains a detention basin that is owned and operated by the City of Redwood City (conveyed to City by Deed 88-151742, Nov. 7, 1988). The detention basin receives stormwater flows from portions of Seaport Boulevard. A small pump station maintains water levels within the detention basin during dry months.

In accordance with RGL 08-02, WRA has prepared draft PJD forms for each of the four Study Areas which are set forth in Appendices A - D to this letter. Each lettered Appendix includes the Corps PJD form, a summary of results, Study Area description, maps, and sample points taken on Corps Arid West Data Forms.

We believe that the PJD forms and supporting documentation provide the information necessary for the Corps to complete a PJD for the Site and look forward to receiving a written response from the Corps with 60 days in accordance with RGL 08-02. If you have any questions regarding our request or the information contained in or attached to it, please contact me. We look forward to moving forward with the permit process as soon as the PJD process is complete. Thank you very much for your prompt attention to this important matter.

Sincerely,



David C. Smith, Esq.
Vice President Regulatory Affairs
DMB ASSOCIATES, INC.

cc: Wade Eakle, Manager, South Pacific Division, U.S. Army Corps of Engineers